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REMARKS

Claims 2 and 10 have been objected to as not being consistent with the preambles of the independent claims from which they depend. In response to this objection, claims 2 and 10 have been amended to replace "needle" with "cannula". Therefore, this objection has been overcome in that dependent claims 2 and 10 are now consistent with the independent claims from which they depend.

The Examiner has maintained his rejection under §102 of the pending claims in view of U.S. 5,997,562. Independent claims 1, 5, and 9 have previously been amended to specifically refer to the needle and surgical instrument as a phacoemulsification needle and a phacoemulsification surgical instrument. As Applicants have previously stated, this distinction of phacoemulsification clearly removes any anticipation rejection of the present invention in view of the '562 patent. The '562 patent is directed to a wire introducer and balloon catheter sheath which is completely unlike the intended use of the phacoemulsification needle claimed in the present application. The '562 patent does not mention any use for eye surgery nor for phacoemulsification use.

The Examiner's naked and unsupported assertion that the sheath of the '562 patent is capable of engaging the hub of a phacoemulsification surgical instrument and transferring ultrasonic energy, is simply not supported by the '562 patent or by any knowledge of one skilled in the art. As those skilled in the art would appreciate the hub of the '562 patent is for receiving a needle introducer or flushing devices, see column 7, lines 63 – 65. The '562 patent simply does not deal with phacoemulsification or ophthalmology in any way. Therefore, the

pending independent claims 1, 5, and 9 simply cannot be anticipated by the '562 patent. One skilled in the art of ophthalmology simply would not look to a wire introducer and balloon catheter sheath for teaching. There is no indication that the '562 patent is capable of being used as a phacoemulsification needle or transferring ultrasonic energy to the needle, as specifically claimed.

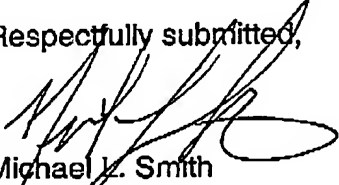
In addition, independent claim 1 has been more specifically amended to include a "threaded hub" to further distinguish the present invention from the '562 patent. The '562 patent teaches a female luer lock 3 which is completely different than the claimed threaded hub for engaging with a phacoemulsification surgical instrument.

The Applicants again remind the Examiner of the cited C.C.P.A. quote, "wherein a functional characterization of the invention is an acceptable patent drafting technique." See the *In Re. Swinehart* quote in the last communication from Applicants.

Also, independent claim 9 has been amended to insert "and" before the last phrase.

Therefore, it is respectfully submitted that pending claims 1-2, 5-6, and 9-10 are condition for allowance, and such allowance is requested at an early date.

Respectfully submitted,



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